

Appl. No. 09/811,360
Amendment dated December 21, 2004
Reply to Office Action mailed October 6, 2004

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REMARKS/ARGUMENTS

Remarks

Claims 1, 4-6, 8-25, 28-43, 50-52 and 54-55 are pending in this application. Claims 1, 4, 6, 8, 16, 23-25, 31, 42-43, 50 and 54 are currently amended. It is respectfully submitted that no new matter has been added. For example, support for the amendments to claims 1, 8, 16, 23-25, 31, 42-43 and 54 is found at Figures 2a-2b and elsewhere in the specification and claims as originally filed.

Interview

Applicant wishes to thank the Examiner and the Examiner's supervisor for the courtesy extended during a telephone interview. During such interview, certain amendments were discussed for putting the application into condition for allowance. Applicant also wishes to thank the Examiner for agreeing to enter this after-final amendment submitted under 37 CFR .116.

Claim Rejections Under 35 U.S.C. 112

Claims 1, 4-6, 8-25, 28-39, 41-43, 50-52, 54 and 55 are rejected under 35 U.S.C. 112, second paragraph as being indefinite for various reasons provided by the Examiner. Several claims have been amended to overcome the lack of antecedent basis presented by "the intramedullary", and Claim 6 has been amended to depend from claim 1.

It is respectfully submitted that "cement fixation" and "ingrowth fixation" are terms that are well understood by those skilled in the art. There is simply nothing

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vague or confusing about these terms to those skilled in the art. Cement fixation relates to application of cement as an adhesive between the base and cut humeral surfaces, while ingrowth fixation relates to fixation based on ingrowth beneath the cut humeral surface.

Claim Rejections Under 35 U.S.C. 103

Claims 1, 4-25, 28-39, 41-43, 50-52, 54 and 55 are rejected under 35 U.S.C. 103 as being unpatentable over U.S. patents 4,550,450 to Kinnett, 5,571,203, to Masini, 4,042,980 to Swanson et al., and German patent DE 1164019 to Chiron-Werke. Each of these claims, as now amended, is allowable because no combination of Kinnett, Masini, Swanson et al. and Chiron-Werke produces Applicant's invention as set forth in any of these currently amended claims. Moreover, as previously submitted, Applicant continues to maintain that there is no suggestion or motivation to combine these references because Masini represents non-analogous prior art.

Claim 1, as now amended, recites a total shoulder arthroplasty apparatus comprising a stemless, humeral head fixation with a rotationally-stabilizing base extension including multiple fins that are uniformly planar along their entire extents and directly intersect at a center of the base surface, the center having a diameter that is approximately equal to a thickness of each of the fins, such that each of the multiple planar fins protrudes radially along a plane from the center of the base surface where it intersects with each of the other fins. This feature is neither taught nor suggested by any of the references being relied upon by the Examiner. For example, the blade elements A, B, C and D of Masini do not intersect at a center of the base surface and/or the center does not have a diameter that is approximately equal to a thickness of each of the fins. Instead, the blades A, B, C and D of Masini's artificial hip apparatus protrude radially

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outward from a cylindrical bullet-like feature 312 that has a diameter far exceeding the thickness of the blades A, B, C and D. Claims 8, 16, 23-25, 31, 42-43, and 54, as now amended, are allowable for the same reasons as amended Claim 1. Each of Claims 4-6, 9-22, 26-41, 50-52 and 55 is allowable as being dependent from one or more of amended Claims 1, 8, 16, 23-25, 31, 42-43 and 54.

It is respectfully submitted that the application is now in condition for allowance. The Examiner's early reconsideration is respectfully requested.

The Commissioner is authorized to charge any deficiencies in fees and credit any overpayment of fees to Deposit Account No. 07-1896. A duplicate page is enclosed.

Respectfully submitted,

GRAY CARY WARE & FREIDENRICH, LLP

Dated: 12/21/04

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Respectfully submitted,

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